

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PAVLO ZINKEVYCH,

Petitioner,

v.

JOSH JOHNSON, Acting Field Office
Director (Dallas), Immigration and Customs
Enforcement, et al.,

Respondents.

Civil Action No. 3:25-CV-01149-N-BW

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Pavlo Zinkevych, filed a writ of habeas corpus under 28 U.S.C. § 2241 alleging that he has been denied the benefits of Temporary Protected Status and that he should not be in immigration detention. The Court should dismiss the petition because Petitioner is not entitled to relief.

I. Procedural History

Petitioner is a native and citizen of Ukraine. App. P. 2. Petitioner entered the United States on August 13, 2022, under the Ukrainian Humanitarian Parole Program. App. P. 4. On January 26, 2025, Petitioner was arrested for driving while intoxicated (with a BAC > .15). *Id.* On January 28, 2025, Immigration and Customs Enforcement (“ICE”) took Petitioner into custody. App. P. 7. On January 29, 2025, ICE filed the Notice to Appear, commencing removal proceedings. App. Pp. 7-10.

On February 24, 2025, Petitioner filed an Application for Temporary Protected Status (“TPS”). App. P. 12. As of June 17, 2025, his application remains pending. On May 22, 2025, the Immigration Judge terminated Petitioner’s removal proceeding based on the pending application for TPS. App. Pp. 16-19. On June 4, 2025, the Department of Homeland Security (“DHS”) filed an appeal of the Immigration Judge’s decision. App. Pp. 22-25. The appeal remains pending before the Board of Immigration Appeals. Therefore, there is no final order of removal in this case.

II. Petitioner is Not Entitled to Relief

Petitioner asserts that his continued detention violates his TPS, and he seeks an immediate release from detention. As set forth above, however, Petitioner, has not been granted TSP (he has merely applied for it) and his removal proceedings are still pending; therefore, his detention is proper.

The Supreme Court has held that an alien does not have a constitutional right to be released from detention during the limited period in which removal proceedings are pending. *Denmore v. Kim*, 538 U.S. 510, 531 (2003); *Carlson v. Landon*, 342 U.S. 524, 545-46 (1952). The right to release, therefore, is a right granted and controlled by statute. *See generally Carlson*, 342 U.S. at 538-46. Specifically, when and under what circumstances an alien may be released while removal proceedings are pending is governed by 8 U.S.C. § 1226(a). Section 1226(a) provides for release in the discretion of the Attorney General “except as provided in subsection (c),” which subsection requires that certain categories of aliens “shall” be taken into custody. 8 U.S.C. § 1226(a), (c). If an alien is not subject to mandatory detention, he may be released on a bond of at least \$1,500

or detained as a matter of discretion (“discretionary detention”). 8 U.S.C. § 1226(a)(1)–(2). This discretionary decision depends on whether the alien can “demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8); *Matter of DJ*, 23 I&N Dec. 572, 576 (A.G. 2003). The discretionary decision to detain or release an alien on bond represents the “initial custody determination,” and bond may be revoked at any time. *See* 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9), (d)(1).

If an alien detained as a matter of discretion under section 1226(a) is not satisfied with the initial custody determination, he may seek review (an “initial bond redetermination”) by an immigration judge. 8 C.F.R. §§ 236.1(d), 1003.19(e). The immigration judge has broad discretion to decide whether the alien “is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk.” *Guerra*, 24 I&N Dec. at 40–41; *Matter of Fatahi*, 26 I&N Dec. 791, 793–94 (BIA 2016). The alien has the burden to prove the appropriateness of release on bond. *Id.* If bond is denied, the alien may file an appeal with the Board of Immigration Appeals (BIA).

The alien also may petition the immigration judge for a “subsequent bond redetermination” upon a showing of changed circumstances. 8 C.F.R. § 1003.19(e). Absent from these procedural rights, however, is any right to judicial review in federal district court of custody decisions of this type pending removal; instead, Congress has by statute precluded such review, *see* 8 U.S.C. § 1226(e), and thus there is no basis for Petitioner to request release on bond in this Court. *See also Maramba v. Mukasey*, No. 3:08-CV-351-K, 2008 WL 1971378, at *3 (N.D. Tex. Apr. 28, 2008) (citing section

1226(e) when explaining that there was no jurisdiction for a habeas petitioner's claims "seeking release on supervision or a lower bond").

In *Denmore*, 538 U.S. at 531, the Supreme Court found that detention "for the limited period of [the alien's] removal proceedings" is constitutional. *Denmore*, 538 U.S. at 531. Although district courts do not have statutory authority to order the release of detainees, some courts have held that the Supreme Court's use of the language "for the limited period of [the alien's] removal proceedings" implies that, at some point, the length of the detention can become unreasonable and unconstitutional.

Denmore did not sanction any specific period at which point pre-order detention could become unconstitutional. The majority of courts interpreting *Denmore* determine the reasonableness of the length of detention on a case-by-case basis. See *Ramirez v. Watkins*, No. CIV.A. B:10-126, 2010 WL 6269226, at *13 (S.D. Tex. Nov. 3, 2010). Petitioner's detention is reasonable. His detention began on January 28, 2025. He has been detained while his immigration case is pending and is now on administrative appeal, and the BIA has not issued a decision in that appeal. Petitioner is being detained pursuant to §1226(a), and because his removal proceedings are ongoing, detention is proper and he is not entitled to relief.

Petitioner claims he cannot be detained because he is "entitled" to the benefits of TPS. (Doc. 1, ¶ 1.) This argument fails for several reasons, though. First, nothing in the statute governing TPS, 8 U.S.C. § 1254a(a)(1), prohibits detention at this point (i.e., where the TPS application is pending but has not yet been granted). See *Fugon v. Napolitano*, No. 10-13935, 2010 WL 4792376, at *3 (E.D. Mich. Nov. 18, 2010) (where an alien had

been ordered removed but then had the removal stayed by a court and also had a TPS application pending, explaining that “there is a remaining question of whether the Government may still lawfully detain Fugon while his TPS application is pending,” with the government indicating that it would release the alien only “if and when the I-601 waiver is granted,” and the court finding that the “Government’s position is legally correct”). Petitioner applied for TPS a month after being taken into immigration custody and nearly three years after first entering the United States. There is no evidence that Petitioner has been granted TPS status. The initial grant of TPS is entirely discretionary. *See* 8 U.S.C. § 1254a(a)(1) (providing that the Attorney General “may grant” TPS). TPS applications are adjudicated by USCIS, not federal courts. *See generally* 8 C.F.R. § 244.10. When USCIS finds that an applicant has shown preliminary eligibility for TPS, it makes a prima facie determination and issues an Employment Authorization Document (EAD) and/or a prima facie letter. *See* 8 C.F.R. § 244.10(a) (“USCIS will grant temporary treatment benefits to the applicant if the applicant establishes prima facie eligibility for Temporary Protected Status in accordance with 8 C.F.R. § 244.5.”), (e)(1) (“Temporary treatment benefits shall be evidenced by the issuance of an employment authorization document.”). This has not occurred. In fact, Petitioner has been notified that an administrative hold has been placed on all benefit requests pending the completion of required screening and vetting to identify any fraud, public safety, or national security concerns. Because USCIS has not reviewed Petitioner’s application or made a prima facie determination, Petitioner is not entitled to

the benefits of TPS at this time.¹ As previously discussed, when an applicant establishes preliminary eligibility for TPS, USCIS will issue an employment authorization document and/or a prima facie letter. Neither has occurred in this case, indicating no prima facie determination has been made and that Petitioner is not entitled to TPS benefits. For these reasons, Petitioner does not have TPS at this time and he shows no basis for this Court to conclude that his detention is somehow improper while his removal proceedings play out. Indeed, Petitioner cites no caselaw showing an entitlement to habeas relief under these circumstances, and because Petitioner's detention is simply a function of his ongoing removal proceedings, his detention at this time is permissible.

III. Conclusion

Petitioner has not been granted TPS and his detention is proper. He is not entitled to the relief he seeks. The petition should be dismissed.

¹ Petitioner cites a statement by an ICE attorney in a filing in immigration court that Petitioner "appears eligible for TPS under section 244(c) of the Immigration and Nationality Act (INA) and has applied for it," and is therefore "entitled to the benefits listed in section 244(a)(1) of the INA." (Doc. 1, ¶ 30.) However, as this passage makes clear, the statement was only that Petitioner *appeared* eligible for TPS; ultimately, though, it is USCIS's decision as to whether to grant TPS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 7, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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